

IN THE MATTER OF	:	BEFORE THE
TEMPLE BETH SHALOM OF	:	HOWARD COUNTY
HOWARD COUNTY	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-025C

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DECISION AND ORDER

On July 14, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Temple Beth Shalom of Howard County ("the Petitioner"), for a conditional use to expand an existing accessory Structure Used Primarily for Religious Activities in an R-20(Residential: Single) Zoning District, pursuant to Section 131.B of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Richard Talkin, Esquire, represented the Petitioner. No one appeared in opposition to the petition. At the outset of the proceeding, Mr. Talkin stated the Petitioner agreed with the findings and conclusion of the Technical Staff Report ("TSR").

FINDINGS OF FACT

Based upon the petition and TSR, I find the following facts:

1. The subject property, 8070 Harriet Tubman Lane (the "Site"), is located in the 5th Election District on the south side of Harriet Tubman Lane approximately 400 feet northwest of

Freetown Road (the "Property"). The Property is referenced on Tax Map 35, Grid 24, as Parcel 256.

2. The 3.935-acre, irregularly shaped Property has about 590 feet of frontage on Harriet Tubman Lane. The rear lot line is about 610 wide. The east side lot is 306 feet deep, the west, about 339 feet deep.

3. The Property is improved with the Temple Beth Shalom religious facility situated in the eastern portion of the Site. To its west is a large paved parking area with about 100 parking spaces. The existing subject structure is a 24' by 36' foot (406.5-square feet) relocatable classroom building previously approved as a temporary use (TU 07-004) and situated to the rear of the main building in the eastern portion of the site. Two paved driveways provide access. The 24-foot wide westernmost driveway is the designated entrance to the site and the 30-foot easterly driveway is the designated exit.

4. By BA 05-001C (the Phase II addition), the Hearing Examiner approved a special exception was approved for a 17,323-square foot building addition to the south and west sides of the existing religious facility.

5. Vicinal properties. To the north and across Harriet Tubman Lane is Parcel 292, which is zoned R-SC (Residential: Single Cluster) and partially improved by the Board of Education Harriet Tubman Building. The abutting properties to the east and west are residential properties improved with single-family detached dwellings.

Roads. Harriet Tubman Lane has two travel lanes, a sixty-foot right-of-way, and it widens along Parcel 256's frontage to include an acceleration and deceleration lane at the

entrance to the religious facility. The posted speed limit is 30 MPH. As of March 2004, the traffic volume on Harriet Tubman Lane was 904 ADT (average daily trips).

6. The Property is served by public water and sewer.

7. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Area." Transportation Map 2000-2020 of the 2000 General Plan shows Harriet Tubman Lane as a major collector.

8. The Petitioner proposes to expand the conditional use by retaining the existing temporary use, a 24-foot by 36-foot, 9.5-foot high, relocatable classroom. The classroom building would provide space for 1 teacher and 20 children attending Hebrew school. One additional light fixture facing the classroom would be added to the existing exterior lighting. The petition states the Petitioner will ensure light from the use will not shine or reflect onto vicinal properties or roads.

9. According to the Conditional Use Plan, the structure is 20 feet from its closest point to the eastern side lot line and about 86 feet from the rear lot line.

10. Adjoining properties to the east and south are buffered by existing vegetation and the Amended Conditional Use Plan depicts perimeter landscaping along the eastern lot line.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. A private religious facility accessory structure is presumptively compatible with residential area land use. The Petitioner's proposed use, a small religious education classroom, will comply with all setback requirements. The Site

is located along a major collector road. Accordingly, the nature and intensity of operation, the size of the Site in relation to the use, and the location of the Site with respect to streets giving access to the Site are such that the uses will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

2. The 9.5-foot high accessory structure and use is a relatively low intensity use. It will be located to the side and rear of the existing facility and will be buffered and screened by landscaping. The overall intensity of the proposed use, in combination with the existing religious facility and a private religious school, is appropriate in light of the proposed buffers and setbacks. Consequently, the proposed use is an appropriate intensification of use and scale, given the adequacy of the existing and proposed buffers and setbacks, in accordance with Section 131.B.1.b.

3. Adverse Effects. The Petitioner has met its burden of presenting sufficient evidence to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a private religious facility in an R-12 zoning district. The proposed use will be buffered by landscaping, natural vegetation and open space, and set back from vicinal properties and roadways. The existing parking is adequate for all existing uses and the proposed use will be landscaped to provide any additional screening the Landscape Manual may require.

The accessory use will generate only a minimal increase in traffic and will utilize the existing religious facility's ingress and egress drives, which will likely provide adequate access with adequate sight distance. Additional traffic is anticipated to be minimal. The proposed accessory religious facility use will not generate inordinate noise or other effects. The petition states the additional outdoor light will not shine or reflect onto vicinal properties. Any noise,

odor, or light generated by the use will be attenuated by distance and will not be greater than those ordinarily associated with such a use. The accessory use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an accessory religious facility structure in an R-12 zoning district, as required by Section 131.B.2.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.39)

a. Lot coverage shall not exceed 25 percent of lot area.

Although the petition does not state the lot coverage, the TSR concludes from the plan that the existing and proposed structures would cover only a small percentage of the Property. Because the lot coverage will not exceed 25 percent of the lot area, the proposed expansion and use complies with Section 131.N.39.a.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

According to the petition and the Conditional Use Plan, the height of the existing accessory structure is 9.5 feet. Because the maximum permitted height of an accessory structure in an R-12 zoning district is 15 feet (Section 109.D.1.b), the structure complies with Section 131.N.39.b.

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious 300 facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:

(1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.

- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.
- (4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

Section 131.N.39.c does not apply because parking is provided on-site.

ORDER

Based upon the foregoing, it is this **21st day of July 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Temple Beth Shalom of Howard County, Inc. for a conditional use to retain an existing accessory structure used primarily for religious activities and one additional outdoor light facing the relocatable classroom is **GRANTED;**

Provided, however, that:

(1). The conditional use shall be conducted in conformance with and shall apply only to the use described in the petition and depicted on the Amended Conditional Use Plan submitted with the petition and not to any other activities, uses, or structures on the Site.

The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele L. LeFaivre

Michele L. LeFaivre

Date Mailed: _____

7/22/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.